THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.26949 of 1997

DATED: 24.04.2007

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BETWEEN:

The Depot Manager, APSRTC,
Piler Depot, Chittoor District. .. Petitioner.

And

The Presiding Officer, Industrial Tribunal-cum-
Labour Court, Ananthapur,
and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.26949 of 1997

ORDER:

This Writ Petition is filed challenging the award made in I.D.No.36 of 1996 dated 22.11.1996 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur.

(2) The petitioner is the Management and the second respondent is the workman.

(3) It is the case of the second respondent herein-workman, who is the petitioner in I.D.No.36 of 1996 before the Labour Court, that he was declared medically unfit to hold the post of driver in view of the defective eye vision, thereafter, he was sent on forced leave with effect from 26.03.1994. Further, it is his case that on 25.02.1995, he was terminated from service in terms of Regulations 6-14 of APSRTC Employees Service Regulations (for short, 'the Regulations'), against which, he raised a dispute under Section 2-A (2) of the Industrial Disputes Act (for short, 'the Act') before the Industrial Tribunal-cum-Labour Court stating that in view of the directions of this Court in W.P.No.10000 of 1989, he is also entitled for reinstatement with all benefits, and keeping him under forced leave and ultimately terminating his services is bad in law.

(3) On the other hand, the petitioner-Management, who is the respondent in the said I.D., filed a counter therein stating that the

workman was found medically unfit for A-1 category vide Medical Certificate No.88632 dated 24/25.02.1994 due to partial colour blindness and he was placed under forced leave as per the circular No.55/90 dated 21.04.1991 from the date of issuance of medical certificate upto one year i.e., from 24.02.1994 to 25.02.1995. In pursuance to the medical report, the petitioner-Management referred the case of the workman for alternative employment to the then Divisional Manager, Chittoor and Regional Manager, Tirupati, for providing employment under A-2 Category, subject to eligibility and availability. Meanwhile, the workman was directed to Tarnaka Hospital, Hyderabad on his appeal for re-medical examination in terms of circular direction ID 121/1993 dated 28.12.1993. The Superintendent-cum-Chief Medical Officer, Tarnaka Hospital, Hyderabad, certified in his proceedings dated 22.06.1994 that the workman is found unfit for A-1 category. The petitioner-Management could not provide alternative employment within the period of one year, as there were no vacancies under A-2 category, hence the workman was made to retire from service on 25.02.1996.

(4) Before the Labour Court, no oral or documentary evidence was let in by both the parties. On the basis of the pleadings and the material placed before it, the Labour Court came to the conclusion that the petitioner therein, who is the workman, is entitled for appointment to A-2 category as a fresh candidate within six months from the date of publication of the award. Aggrieved by the same, the present writ petition is filed.

(5) The learned counsel for the petitioner-Management strenuously contended that, firstly, the very petition under Section 2-A (2) of the Act

is not maintainable. Secondly, the second respondent-workman became medically unfit on 25.02.1994, therefore, the provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and full participation), Act 1995 (for short, 'the Persons with Disabilities Act') have no application in case of the second respondent-workman, and as such, the award passed by the Labour Court is erroneous and liable to be set aside.

(6) Per contra, the learned counsel for the respondents supported the award made by the Labour Court and submitted that absolutely no grounds are made out calling for interference of this Court under Article 226 of the Constitution of India and the Writ Petition is liable to be dismissed.

(7) I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

(8) At the outset, the learned counsel for the petitioner-Management argued that the petition under Section 2-A (2) of the Act is not maintainable. The very definition of Section 2-A of the Act reads as hereunder:-

> "2-A. Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out, of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.
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> "(2) Notwithstanding anything in Section 10, any

such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein,; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

From the above, it is clear that since the second respondent was made to retire on medical grounds without providing alternative employment, it must be deemed that it falls into "otherwise terminating the services of the individual workman". Therefore, the petition under Section 2-A (2) is maintainable before the Labour Court.

(9) Secondly, the learned counsel for the petitioner stated that as the second respondent became medically unfit, he was not entitled for any alternative employment and was made to retire.

In fact, Section 47 of the Persons with Disabilities Act contemplates providing an appropriate alternative employment to the persons those who become medically unfit, and Section 2 (u) of the Persons with Disabilities Act contemplates even a person with impairment of vision functioning even after treatment or standard refractive correction but who use or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device, is also treated to be a person disabled under the Act. Therefore, the second respondent is entitled for alternative employment.

(10) However, the learned counsel for the petitioner has stated that since the second respondent became medically unfit on 26.03.1994,

he is not entitled for the benefit of the Persons with Disabilities Act also. But it is not disputed that the second respondent's services were terminated with effect from 25.02.1995 and by that time, the Act has already come into force on 07.02.1995.

(11) In view of the above, I am of the opinion that the award passed by the Labour Court cannot be said to be arbitrary and illegal and does not require any interference by this Court under Article 226 of the Constitution of India. Therefore, the Writ Petition is devoid of merits and is liable to be dismissed.

(12) Accordingly, the writ petition is dismissed and the petitioner shall pay all the benefits flowing out of the award passed by the Labour Court, to the second respondent, within a period of three months from the date of receipt of a copy of this Order. No costs.

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(C.V.RAMULU, J)

24-04-2007

v v